

Record of Cabinet portfolio holder decision

Local Government Act 2000 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Decision made by	Councillor Roger Cox
Key decision?	No
Date of decision (same as date form signed)	10 July 2018
Name and job title of officer requesting the decision	Cathie Scotting Major Applications Officer
Officer contact details	Tel: Cathie Scotting Email: Cathie.scotting@southandvale.gov.uk
Decision	<p>To recommend Council at its meeting on 19 July 2018 to approve the application for the commuted sum for maintaining the public open space land. Create a budget for £286,377.59 to be transferred to Chilton Parish Council for the maintenance of the Public Open Space in connection with the following planning permission:</p> <p>Development: Land to the South of Chilton Field Address: Avon Road Chilton Planning Ref: P05/V1086/O</p>
Reasons for decision	<p>Chilton Parish Council is now the registered owner of the Public Open Space Land and is responsible for maintaining the area which was transferred to them on 1 February 2018. The maintenance contribution was due to be paid on the transfer of the land to the parish. The contribution was paid to the District Council at the end of May 2018, and the Parish has requested the funds to enable them to maintain the land in accordance with the S106 agreement.</p> <p>The S106 agreement is not clear and unambiguous on the use of the S106 contribution. However</p> <ul style="list-style-type: none"> the planning decision was made under delegated powers and not by a planning committee, and the sum requested is more than £100,000 <p>In accordance with the Constitution's Finance Procedure Rules (para 75) the decision to release the funds requested lies with full Council.</p>

Alternative options rejected	None considered			
Legal implications	<p>The S106 agreement asks for a Public Open Space scheme. The S106 is not clear on the exact requirements but states that it should be in accordance with the planning permission. The planning permission includes Condition 4 for a landscaping scheme and details of this were submitted under planning reference P11/V1557/RM and approved 17 November 2011. The landscaping scheme includes the public open space. The public open space scheme required under the S106 should relate to the maintenance and management of the public open space. This has not yet been submitted and the council will require the approval of this before monies are released.</p> <p>The Parish will need to agree to the third party funding letter, which sets out what the funds can be used for and includes a spending deadline to ensure delivery of the project.</p>			
Financial implications	None			
Other implications	None			
Background papers considered	Report for Individual Cabinet Member Decision (Planning and Finance)			
Declarations/conflict of interest? Declaration of other councillor/officer consulted by the Cabinet member?				
List consultees		Name	Outcome	Date
	Ward councillors 20 June 2018	Janet Shelley Reg Waite	No comment	
	Legal		No comment	
	Finance 20 June 2018	Brian Mew	No comment	
	Human resources			
	Sustainability			
	Diversity and equality 21 June 2018	Cheryl Reeves	No comment	
	Communications			

	Chief Executive		No comment	
Confidential decision? If so, under which exempt category?	No			
Call-in waived by Scrutiny Committee chairman?	Not applicable			
Has this been discussed by Cabinet members?				
Cabinet portfolio holder's signature To confirm the decision as set out in this notice.	Signature ____ Councillor Roger Cox _____ Date ____ 10 July 2018 _____			

ONCE SIGNED, THIS FORM MUST BE HANDED TO DEMOCRATIC SERVICES IMMEDIATELY.

For Democratic Services office use only		
Form received	Date: 10 July 2018	Time: 12:30
Date published to all councillors	Date: 10 July 2018	
Call-in deadline	Not applicable	

S106 Fund Request

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Head of Service: Planning: Adrian Duffield Finance: William Jacobs

Cabinet Members (Vale): Cllr Roger Cox and Cllr Robert Sharp

S106 Request – Chilton Parish Council

Purpose of paper

1. We have received an application for funds from the Chilton Parish Council in the Parish of Chilton for a total of £286,377.59 from a S106 contribution arising from the following development:

Development: Land to the South of Chilton Field

Address: Avon Road Chilton

Planning Ref: P05/V1086/O

S106 Ref: 09V19

Date of agreement: 13 November 2009

2. The S106 agreement is not ‘clear and unambiguous’ about how the contributions are to be used . However
 - the planning decision was made under delegated powers and not by a planning committee, and
 - the sum requested is more than £100,000

Therefore, in accordance with the Constitution’s Finance Procedure Rules (para 75) (extract at Appendix 1) the decision to release the funds requested lies with full Council. This paper seeks the agreement of the Cabinet Member for Planning in consultation with the Cabinet Member for Finance to recommend to Council that a budget be created to release the funds requested for the purposes described below.

The S106 contribution

3. The extract from the S106 agreement below sets out the requirements of each of the S106 contributions.

- The “Public Open Space Commuted Sum” contribution is defined in clause one of the agreement as ‘the sum of £203,374 to be used towards the future maintenance of that part of the Public Open Space Land which is transferred to the Parish Council in accordance with the provisions of the Second Schedule’.
 - The ‘Public Open Space Scheme’ means the scheme for the layout of the public open space within the Public Open Space Land and in accordance with the Planning Permission’.
 - The ‘Public Open Space Land’ means the area hatched green on Plan 2 together with any additional land that the Owner wishes (but is not obliged) to allocate for public open space to be used for the purpose of public open space and for no other purpose’.
4. The S106 agreement asks for a Public Open Space scheme. The S106 is not clear on the exact requirements but states that it should be in accordance with the planning permission. The planning permission includes Condition 4 for a landscaping scheme and details of this were submitted under planning reference P11/V1557/RM and approved 17 November 2011. The landscaping scheme includes the public open space. The Public open space scheme required under the S106 should relate to the maintenance and management of the public open space. This has not yet been submitted and the council will require the approval of this before monies are released.
 5. The Public Open Space Land was transferred to the Parish Council on 1 February 2018. The developers did not notify the District Council of the transfer but the Parish Council requested the maintenance contribution on 13 April. The payment was received on 29 May 2018.
 6. This agreement has a ten year spend by date which is calculated from the date of receipt of the contribution therefore; the “Public Open Space Commuted Sum” contribution expires on 29 May 2028
 7. The figures for the Maintenance sum requested by Chilton Parish Council are set out in the summary table below.

S106 09V19 - Development of Land to the South of Chilton Field – Chilton Parish Council application for funds

Infrastructure category	Contribution towards (extract from S106 agreement)	Amount in Agreement	Contributions Received (incl indexation)	Amount requested	Balance
Maintenance	the sum of £203,374 to be used towards the future maintenance of that part of the Public Open Space Land which is transferred to the Parish Council in accordance with the provisions of the Second Schedule’.	£203,374	£286,377.59 received on 29/05/2018	£286,377.59	£0.00

8. The application is for the commuted sum for maintaining the Public Open Space land which was transferred to the Parish on 1 February 2018.

The project

Project description –

9. Chilton Parish Council is now the registered owner of the Public Open Space Land and is responsible for maintaining the area which was transferred to them on 1 February 2018. The maintenance contribution was due to be paid on the transfer of the land to the parish. The contribution was paid to the District Council at the end of May 2018, and the Parish has requested the funds to enable them to maintain the land in accordance with the S106 agreement.

Planning permission

10. Planning permission for the project is not necessary.

Total project cost and funding

11. The commuted sum of £286,377.59 is earmarked for the parish in the S106 agreement. The parish has now received the Public Open Space from the developers and are responsible for its maintenance.

Consultations

12. The contributions from the agreement 09V19 are specifically for the Parish Council. Other departments have been notified of the application but no other organisation is eligible to receive the funds

Recommendation

Does the project fall within the spending parameters of the S106?

13. Yes, S106 Monies to be released once an acceptable scheme for the management and maintenance of the public open space including a programme of works (the Public Open Space scheme) has been submitted and approved by the local planning authority.

Is it a suitable use of the fund?

14. The proposed project conforms to the spending parameters of the S106 agreement and is the intended use of the funds.
15. In view of the above factors it is recommended that a budget is created which allocates the requested £286,377.59 to the Public Open Space Maintenance Land project and the funds be released to Chilton Parish Council.
16. It is recommended that the parish council be advised of the allocation of the funds in a letter, which sets out what the funds can be used for and includes a spending deadline to ensure delivery of the project.

Extract from the Council's Constitution 16 May 2018 Finance Procedure Rules

- "74. For section 106 or Community Infrastructure Levy agreements that provide clear and unambiguous details on how the receipts raised must be used, where that agreement has been approved by the Planning Committee and over which further discretion cannot be applied, then the ~~strategic management team~~ **head of planning** can request **and the head of finance can approve** the creation of the relevant revenue or capital budget.
75. For all other section 106 and Community Infrastructure Levy agreements where contributions are received by the council, a budget for the spending of the receipt must be created as follows:
- (a) For agreements of up to £20,000, budgets can be **requested by the head of planning and** approved by the ~~senior management team~~ **head of finance**.
 - (b) For agreements greater than £20,000 up to £100,000, budgets can be approved by the relevant Cabinet member in consultation with the Cabinet member for finance.
 - (c) For agreements of greater than £100,000, budgets must be approved by Council.";